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102D CONGRESS
1st Session

SENATE

REPORT
102-121

ALLOWING THE CITY OF POCATELLO, IDAHO, TO USE CERTAIN LANDS FOR A CORRECTIONAL FACILITY FOR WOMEN

JULY 25 (legislative day, JULY 8), 1991.—Ordered to be printed

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Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 1448]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 1448) to amend the Act of May 12, 1920 (41 Stat. 596), to allow the city of Pocatello, Idaho, to use certain lands for a correctional facility for women, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the Act do pass.

PURPOSE OF THE MEASURE

The purpose of H.R. 1448, as ordered reported, is to amend the Act of May 12, 1920, to authorize the city of Pocatello, Idaho, to use a portion of a parcel of land previously conveyed to the city by the United States for watershed protection for construction of a correctional facility for women, or for other public purposes.

BACKGROUND AND NEED

In 1920, the Federal Government conveyed approximately 2,240 acres of land to the city of Pocatello, Idaho, to conserve and protect the city's water supply. The 1920 Act provided for a reversion of the property to the United States if the city ceased to use or manage the lands for the protection of the city's water supply.

The city of Pocatello would like to construct a women's correctional facility on a portion of the site. The Idaho State legislature has already appropriated more than half of the $10 million needed for the facility, and is expected to appropriate the remainder

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during next year's legislative session. The site was selected by a State Board of Corrections panel as the most suitable site for the new prison.

As ordered reported, H.R. 1448 authorizes the city to permit construction of the correctional facility on not more than 40 acres of land and allows the remainder of the land to be used for outdoor recreation purposes, consistent with natural open space and wildlife habitat protection purposes, and for other public purposes, consistent with water storage or utility transmission purposes.

LEGISLATIVE HISTORY

H.R. 1448 passed the House of Representatives by a voice vote on June 24, 1991. Similar legislation, S. 663, was introduced in the Senate by Senators Craig and Symms on March 14, 1991. The Subcommittee on Public Lands, National Parks and Forests held a hearing on S. 663 on May 21, 1991.

At the business meeting on June 26, 1991, the Senate Committee on Energy and Natural Resources ordered H.R. 1448 favorably reported.

SECTION-BY-SECTION ANALYSIS

Section 1 amends the Act of May 12, 1920 (41 Stat. 596), whereby the Federal Government conveyed approximately 2,240 acres to the city of Pocatello, Idaho, to conserve and protect the city's water supply. The amendment made by H.R. 1448 to the 1920 Act would allow the city to permit the construction of a women's correctional facility on not more than 40 acres of the land in the west half of section 2, provided that the city does not permit construction of any road within 300 feet of either side of City Creek.

The section also permits the remainder of the land to be used for outdoor recreational purposes, consistent with the maintenance of natural open space and wildlife habitat purposes. The land may also be used for other public purposes, consistent with water storage or utility transmission purposes.

The city is authorized to convey or lease the lands for use for the correctional facility to another governmental entity, although the city is prohibited from transferring its right, title, and interest to the remainder of the lands.

The 1920 Act is further amended by adding a new subsection 1(b) to provide that if the land, or any portion thereof, becomes (or may become) contaminated with hazardous substances, such land shall not, under any circumstances, revert to the United States. If such lands do become contaminated with hazardous substances, the bill provides that the city shall be liable to pay the United States the fair market value of the land.

Section 2 amends the 1920 Act to change the city's reporting requirement to the Secretary from once annually to one report every 5 years.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on June 26, 1991, by a unanimous vote of a quorum

present, recommends that the Senate pass H.R. 1448 as described herein.

The rollcall vote on reporting the measure was 20 yeas, 0 nays, as follows:

YEAS—20	NAYS—0
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Bradley	
Mr. Bingaman [1]	
Mr. Wirth	
Mr. Conrad	
Mr. Akaka	
Mr. Fowler [1]	
Mr. Shelby [1]	
Mr. Wellstone [1]	
Mr. Wallop	
Mr. Hatfield	
Mr. Domenici [1]	
Mr. Murkowski	
Mr. Nickles	
Mr. Burns	
Mr. Craig	
Mr. Seymour	
Mr. Garn	

[1] Indicates voted by proxy.

Cost and Budgetary Considerations

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, July 18, 1991.

Hon. J. Bennett Johnston,
Chairman Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 1448, an act to amend the Act of May 12, 1920 (41 Stat. 596) to allow the city of Pocatello, Idaho, to use certain lands for a correctional facility for women, and for other purposes, as ordered reported by the Senate Committee on Energy and Natural Resources on July 17, 1991. Based on information from the Bureau of Land Management, we estimate that enactment of H.R. 1448 would result in no cost to the federal government or to state and local governments. Because the act would not affect direct spending or receipts, there also would be no pay-as-you-go scoring under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

H.R. 1448 would allow up to 40 acres of land in Pocatello to be used as the site of a correctional facility for women. Under current law, this land, which was granted to the city by the federal govern-

ment in 1920, is restricted to certain conservation and protection uses. H.R. 1448 also would replace certain annual reporting requirements with a requirement that the city prepare certain reports every five years, beginning in 1996.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Theresa Gullo, who can be reached at 226–2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 1448. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsiblities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 1448, as ordered reported.

EXECUTIVE COMMUNICATIONS

On May 7, 1991, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth executive views on the Senate companion bill, S. 663. These reports had not been received at the time the report on H.R. 1448 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Bureau of Land Management at the Subcommittee hearing follows:

Statement of Michael Penfold, Assistant Director, Land and Renewable Resources, Bureau of Land Management, Department of the Interior

I appreciate the opportunity to appear here today to discuss S. 663, a bill to allow the city of Pocatello, Idaho, to use certain lands for a correctional facility for women and for other public purposes.

We have no objection to the enactment of S. 663.

Pursuant to the Act of May 12, 1920, the city of Pocatello, Idaho, was granted approximately 2,240 acres of public land to be used for the conservation and protection of the source of its water supply. The land patent contained a provision, required by the authorizing Act, that the lands would revert to the United States if they ceased to be used for the purpose stated.

The city of Pocatello now wishes to broaden the allowable uses so that it can utilize the land for other public purposes. We understand it wishes to construct and operate a correctional facility on a small portion of the land. In order to avoid being in violation of the use conditions and the operation of the reverter provisions, legislation is necessary to modify the 1920 Act and to authorize a modification of the patents. We have no objection to the city's use of a

small portion of the land for the proposed public purpose use or for other public purposes.

S. 663 would augment the purposes for which the lands were conveyed to make them available for a variety of public purposes. In the seventy-one years since enactment of the Act of May 12, 1920, the need for the land for other public purposes has become evident. The strict limitations in the Act and patents would appear to be too restrictive.

We note that in addition to allowing for construction of a women's correctional facility, this legislation would broaden the allowed uses of the remaining approximately 2,170 acres to include all public purposes. We do not object to this broadening as long as the treatment of these lands is made similar to those conveyed under the Recreation and Public Purposes Act.

We are also concerned about the potential for deposition of hazardous materials under the terms of this legislation. We therefore urge the Committee to amend the bill to restrict reversion to exclude those cases where hazardous materials may be introduced on these lands at some later time. We will be happy to work with the Committee to develop appropriate language.

Section 2 of S. 663 would eliminate the words "of each year" from the requirement of the 1920 Act that the Mayor of the city of Pocatello report to the Secretary on the use of the land during the preceding calendar year. It is not clear whether this is intended to eliminate all requirements for reporting or for only an annual report. This provision needs reexamination to clarify its scope and intent.

Enactment of S. 663 would have no pay-as-you-go impact under the terms of the Budget Enforcement Act of 1990.

This concludes my prepared statement. I will be pleased to answer questions.

Changes in Existing Law

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Act H.R. 1448, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Act of May 12, 1920

Chap. 181.—An ACT To grant certain lands to the city of Pocatello, State of Idaho, for conserving and protecting the source of its water supply.

Be it enacted by the Senate and House of representatives of the United States of America in Congress assembled,

Section 1. (a) That the Secretary of the Interior be, and he is hereby, authorized and directed to convey to the city of Pocatello, in the county of Bannock, and State of Idaho, certain adjacent public lands described as west half of section two and all sections three, four, nine, and ten, or such portions thereof as said city may select, in township seven south, range thirty-four east, Boise meridian, in said county and State, containing two thousand eight hundred and eighty acres, upon the payment of $1.25 per acre for the

land selected, to have and to hold said lands for the conservation and protection of the source of the water supply of said [city:] *city, and for use for the construction and operation of a correctional facility for women on no more than 40 acres in the west half of section two that are continguous with Fore Road (as such road existed on June 11, 1991), provided that neither the city nor any other entity allows the construction after June 11, 1991, of any temporary or permanent road across City Creek or within the area 300 feet on each side of the centerline of such creek (but any road existing within such area on such date may be maintained to the same standard as existed on such date), and (with respect to the remainder of such lands) for use for outdoor recreational purposes consistent with the maintenance of natural open space, wildlife habitat purposes, and other public purposes consistent with water storage or utility transmission purposes by such city or other governmental entity. The city of Pocatello may convey or lease to a governmental entity established under the laws of the State of Idaho such portion of the lands conveyed to such city under this Act as may be used for a correctional facility, but may not transfer any of the city's right, title, or interest in any other portion of such lands: Provided,* That the grant hereby made is, and patent issued thereunder shall be, subject to all legal rights heretofore acquired by any person or persons in or to the above-described premises or any part thereof and now existing under and by virtue of the laws of the United States: *And provided further,* That there shall be reserved to the United States all oil, coal, and other mineral deposits that may be found in the lands so granted and all necessary use of the lands for extracting the same; and that the lands hereby authorized to be conveyed as hereinbefore set forth and all portions thereof shall be held and used by or for the said grantee for the purpose herein specified; and if the said lands shall cease to be so used they shall revert to the United States, and this condition shall be expressed in the patent to be issued under the terms of this Act: *And provided further,* That said grantee shall within two years from the passage of this Act make its selection and entry of the land and make use thereof for the purposes herein specified and the grant herein is made upon the express condition that the mayor of the city of Pocatello shall, on or before January 10 [of each year after the expiration of said two years,] *every five years beginning in 1996,* submit report to the Secretary of the Interior as to the use made of the land herein granted during the preceding calendar year, showing compliance with the terms and conditions stated in this Act, and that in the event of his failure to so report, or in the event of a showing to the Secretary of the Interior that the terms of the grant have not been complied with, that the grant shall be held to be forfeited, and the Attorney General of the United States shall institute suit in the proper court for the recovery of said lands.

(b)(1) Notwithstanding any other provision of this Act, if any land, or portion thereof, granted or otherwise conveyed to the city of Pocatello under this Act is or shall become contaminated with hazardous substances (as defined in the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601), or if such land, or portion thereof, has been used for purposes that the Secretary of the Interior finds may result in the disposal, placement,

or release of any hazardous substance, such land shall not, under any circumstance, revert to the United States.

(2) If lands granted or conveyed to the city of Pocatello by or pursuant to this act shall be used for purposes that the Secretary of the Interior finds: (A) inconsistent with the purposes for which such lands were granted or conveyed and not authorized by the Secretary pursuant to this Act, and (B) which may result in the disposal, placement, or release of any hazardous substance, the city of Pocatello shall be liable to pay to the Secretary of the Interior, on behalf of the United States, the fair market value of the land, including the value of any improvement thereon, as of the date of conversion of the land to such nonconforming purpose. All amounts received by the Secretary of the Interior pursuant to this subsection shall be retained by the Secretary of the Interior and used, subject to appropriations, for the management of public lands and shall remain available until expended.

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